

STATE OF MICHIGAN
COURT OF APPEALS

VINCE GILL TOURS, INC., KEITH FOWLER
PROMOTIONS, INC., VARILITE
INTERNATIONAL, INC., CPL, INC., and
VARILITE, INC.,

Plaintiffs,

and

CITY OF SAGINAW,

Plaintiff-Appellant,

v

T.H.E. INSURANCE COMPANY,

Defendant-Appellee,

and

ALLIED SPECIALTY INSURANCE, INC.,

Defendant.

UNPUBLISHED
March 11, 2003

No. 238351
Saginaw Circuit Court
LC No. 99-030263-CK

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff City of Saginaw appeals as of right the judgment entered in favor of defendant T.H.E. Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Keith Fowler Promotions (Fowler) leased Wendler Arena from plaintiff for a concert. The lease contained a provision requiring Fowler to indemnify plaintiff for any loss arising from the use of the arena. It also required Fowler to obtain commercial general liability insurance and to name plaintiff as an additional insured. An employee was injured setting up for a concert, and plaintiff paid worker's compensation benefits. Plaintiff brought this declaratory judgment action seeking indemnification under the general commercial liability policy issued by defendant to

Fowler. The trial court granted judgment for defendant, finding that coverage was barred under the worker's compensation exclusion in the policy.

Construction and interpretation of an insurance contract is a question of law that is reviewed de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). An insurance contract must be enforced in accordance with its terms. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). A court must not hold an insurance company liable for a risk it did not assume. *Id.* Exclusions to the general liability in a policy are to be strictly construed against the insurer. *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 597; 489 NW2d 444 (1992). Clear and specific exclusions must be enforced. *Id.*

The insurance policy contains an exclusion providing that it does not apply to "[a]ny obligation of the insured under a workers' compensation, disability benefits, or unemployment compensation law or any similar law." The policy also contains an employer's liability exclusion, with an exception for liability assumed under an insured contract.

The insured contract exception only appears in the employer's liability exclusion, and it is not part of the worker's compensation exclusion. Plaintiff asserts that since the employee made no claim for worker's compensation benefits directly to Fowler, the worker's compensation exclusion does not apply. However, the employee only received worker's compensation benefits, and his redeemed award is what plaintiff seeks to recover. There is no other basis for the claim. Where plaintiff is an additional insured and a statutory employer of the injured employee under worker's compensation law, the worker's compensation exclusion in a general commercial liability policy applies. Couch, Insurance 3d, § 129:5, pp 12-13.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Joel P. Hoekstra